

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

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PAMELA REILLY, as personal  
representative of the Estate of Rosemarie  
Reilly,

Plaintiff,

v.

OTTAWA COUNTY, a municipal  
corporation; DEPUTY BRANDON  
TUBERGEN, in his individual capacity;  
SERGEANT CHRIS DILL, in his individual  
capacity; POLICE OFFICER COLLIN  
WALLCE, in his individual capacity;  
SERGEANT DENNIS LUCE, in his  
individual capacity; CAPTAIN BRANDON  
DEHAAN, in his individual capacity; and  
SEAN KELLEY, in his individual capacity

Defendants.

Case No. 1:18-cv-1149  
Honorable Janet T. Neff  
Magistrate Ellen S. Carmody

**OTTAWA COUNTY DEFENDANTS,  
INCLUDING THE COUNTY, DEPUTY  
TUBERGEN, and SERGEANTS DILL  
AND LUCE'S ANSWER TO  
COMPLAINT, AFFIRMATIVE  
DEFENSES, AND JURDY DEMAND**

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Defendants OTTAWA COUNTY, OTTAWA COUNTY SHERIFF'S DEPUTY  
BRANDON TUBERGEN, OTTAWA COUNTY SHERIFF'S SERGEANT CHRIS DILL, and  
OTTAWA COUNTY SHERIFF'S SERGEANT DENNIS LUCE ("Ottawa County Defendants"),

by and through their attorneys aforesaid, answer the Complaint and Jury Demand against the Ottawa County Defendants and assert the following affirmative defenses:

**JURISDICITON AND VENUE**

1. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is required.

2. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is required.

3. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is required.

**PARTIES**

4. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

5. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

6. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

7. The Ottawa County Defendants admit that Ottawa County is a municipal corporation organized under the laws of the state of Michigan. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is required.

8. The Ottawa County Defendants admit that Defendant Brandon Tubergen is a deputized member of the Ottawa County Sheriff's Department. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is required.

9. The Ottawa County Defendants admit that Defendant Chris Dill is a deputized member and sergeant of the Ottawa County Sheriff's Department. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is required.

10. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

11. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

12. The Ottawa County Defendants admit that Defendant Dennis Luce is a deputized member and sergeant of the Ottawa County Sheriff's Department. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is required.

13. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

#### **COMMON FACTUAL ALLEGATIONS**

14. The Ottawa County Defendants reallege and reassert as if fully set forth herein their allegations to paragraphs 1 through 13 of the Complaint as if fully set forth herein.

15. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

16. Admitted.

17. Admitted.

18. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

19. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

20. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

21. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

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79. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

80. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

81. Denied as factually untrue.

82. Denied as factually untrue.

83. Denied as factually untrue.

84. Denied as factually untrue.

85. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

86. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

87. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

88. The Ottawa County Defendants neither admit nor deny due to a lack of information regarding the allegations.

89. Denied as factually untrue.

90. Denied as factually untrue.

91. Denied as factually untrue.

**COUNT I**  
**FOURTEENTH AMENDMENT VIOLATIONS UNDER 42 U.S.C. § 1983 AS TO (ALL INDIVIDUAL) DEFENDANTS**

92. The Ottawa County Defendants reallege and reassert their answers to the allegations in paragraphs 1 through 91 of the Complaint as if fully set forth herein.

93. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is due.

94. Denied as legally and factually untrue.

95. Denied as legally and factually untrue.

96. Denied as legally and factually untrue.

97. Denied as legally and factually untrue.

98. Denied as legally and factually untrue.

99. Denied as legally and factually untrue.

100. Denied as legally and factually untrue.

101. Denied as legally and factually untrue.

WHEREFORE, the Ottawa County Defendants respectfully request that the Complaint be dismissed with prejudice and without recovery of any relief whatsoever and that they be awarded

such further legal and equitable relief as appropriate, including, but not limited to, costs and attorneys' fees.

**COUNT II**

**42 U.S.C. § 1983 *MONELL* CLAIM (AS TO DEFENDANT OTTAWA COUNTY ONLY)**

102. The Ottawa County Defendants reallege and reassert their answers to the allegations in paragraphs 1 through 101 of the Complaint as if fully set forth herein.

103. The Ottawa County Defendants neither admit nor deny the allegations of this paragraph because they are legal conclusions to which no responsive pleading is due.

104. Denied as legally and factually untrue.

105. Denied as legally and factually untrue.

106. Denied as legally and factually untrue.

107. Denied as legally and factually untrue.

108. Denied as legally and factually untrue.

WHEREFORE, the Ottawa County Defendants respectfully request that the Complaint be dismissed with prejudice and without recovery of any relief whatsoever and that they be awarded such further legal and equitable relief as appropriate, including, but not limited to, costs and attorneys' fees.

**COUNT III**

**WRONGFUL DEATH AS TO DEFENDANTS TUBERGEN, DILL, LUCE, WALLACE, DEHAAN, AND KELLEY**

109. The Ottawa County Defendants reallege and reassert their answers to the allegations in paragraphs 1 through 108 of the Complaint as if fully set forth herein.

110. Denied as legally and factually untrue.

111. Denied as legally and factually untrue.

112. Denied as legally and factually untrue.

113. Denied as legally and factually untrue.

114. Denied as legally and factually untrue.

115. Denied as legally and factually untrue.

WHEREFORE, the Ottawa County Defendants respectfully request that the Complaint be dismissed with prejudice and without recovery of any relief whatsoever and that they be awarded such further legal and equitable relief as appropriate, including, but not limited to, costs and attorneys' fees.

**COUNT IV**  
**CIVIL CONSPIRACY AS TO DEFENDANTS TUBERGEN, DILL, LUCE, WALLACE,**  
**DEHAAN, AND KELLEY**

116. The Ottawa County Defendants reallege and reassert their answers to the allegations in paragraphs 1 through 115 of the Complaint as if fully set forth herein.

117. Denied as legally and factually untrue.

118. Denied as legally and factually untrue.

119. Denied as legally and factually untrue.

120. Denied as legally and factually untrue.

WHEREFORE, the Ottawa County Defendants respectfully request that the Complaint be dismissed with prejudice and without recovery of any relief whatsoever and that they be awarded such further legal and equitable relief as appropriate, including, but not limited to, costs and attorneys' fees.

SILVER & VAN ESSEN, P.C.  
Attorneys for Defendants Ottawa County,  
Tubergen, Dill, and Luce

Date: November 1, 2018

By: /s/ Douglas W. Van Essen  
Douglas W. Van Essen (P33169)  
Lee T. Silver (P36905)  
Michael L. Gutierrez (P79440)

BUSINESS ADDRESS AND TELEPHONE:  
300 Ottawa Avenue, NW, Suite 620  
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**AFFIRMATIVE DEFENSES**

The Ottawa County Defendants, by and through their attorneys aforesaid, incorporate by reference their answers to the Complaint as if fully set forth herein and state the following as their affirmative defenses:

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff's decedent failed to mitigate her alleged damages.
3. Plaintiff's claims are barred in whole or in part by Rosemarie Reilly's contributory and/or comparative negligence or intentional acts, including, to but not limited to, the fact that she chose to date Jeremy Kelley, continue living with Jeremy Kelley after they broke up, and did not leave the area when she knew she was in physical danger.
4. Plaintiff's claims are barred in whole or in part by her own contributory and/or comparative negligence, including, to but not limited to, the fact she failed to remove the decedent from the area when she perceived that Rosemary Reilly was in physical danger
5. Plaintiff's claims are barred in whole or in part by the doctrine of laches, estoppel, or unclean hands.
6. Plaintiff has failed to add necessary parties.
7. Plaintiff's claims are barred by the applicable statute of limitations.
8. The Ottawa County Defendants are entitled to attorneys' fees pursuant to 42 U.S.C. § 1988.
9. In addition to the facts above, Plaintiff's claims are barred in whole or in part by the doctrines of governmental, municipal, qualified, good faith, and/or officer immunity.

10. Some or all of the claims may be barred by the Heck doctrine.

11. Some or all of the claims may be barred by Plaintiff's failure to follow administrative remedies.

12. The doctrine of *respondeat superior* has no applicability to the claims and, therefore, the absence of that doctrine may bar some or all of the claims.

13. The actions of the Ottawa County Defendants did not violate Rosemarie Reilly's constitutional rights, nor were they deliberately indifferent nor occurred with evil intent or reckless disregard.

14. Some or all of the claims may be barred by collateral estoppel.

15. The Ottawa County Defendants reserve the right to add additional defenses as they become known through discovery.

WHEREFORE, the Ottawa County Defendants request that this Court deny Plaintiff any relief pursuant to the Complaint, that the Complaint be dismissed with prejudice, and that they be granted such further relief as this Court deems appropriate, including but not limited to, costs and attorneys' fees.

SILVER & VAN ESSEN, P.C.  
Attorneys for Defendants Ottawa County,  
Tubergen, Dill, and Luce

Date: November 1, 2018

By: /s/ Douglas W. Van Essen

Douglas W. Van Essen (P33169)  
Lee T. Silver (P36905)  
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**DEMAND FOR JURY TRIAL**

By and through their attorneys, SILVER & VAN ESSEN, P.C., each and every Ottawa County Defendant hereby demands a trial by jury on all issues in this case that are triable to a jury.

SILVER & VAN ESSEN, P.C.  
Attorneys for Defendants Ottawa County,  
Tubergen, Dill, and Luce

Date: November 1, 2018

By: /s/ Douglas W. Van Essen  
Douglas W. Van Essen (P33169)  
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